

1 Nancy J. Swenson.

2 Appellants appeared through their legal counsel Richard L.
3 Phillips and Christopher Marsh. Respondent was represented by
4 Assistant Attorney General Charles W. Lean.

5 Witnesses were sworn and testified. Exhibits were admitted and
6 examined. Post hearing memoranda were filed by each party. All
7 proceedings were heard or read. From this the Board makes these

8 FINDINGS OF FACT

9 I

10 Appellant, Phoenix Resource Recovery, Inc., (PRR) located near
11 Chewelah is a minerals recovery business primarily dependent on the
12 by-products of Northwest Alloys, Inc., of Addy for its raw
13 materials--flux and magnesium sludge bars. PRR purchases these bars
14 and processes them, removing residual magnesium. The remainder,
15 residue of the fluxing material or "spent flux," is predominantly
16 composed of potassium, calcium, magnesium, sodium chlorides and
17 magnesium oxide and is deposited on a stockpile adjacent to the PRR
18 plant. PRR generates this residue at a rate of 1000 tons per month.

19 II

20 In 1978 PRR applied to the Department of Ecology (DOE) for
21 approval of construction, installation, and operation of their
22 Chewelah plant. This is a requirement under the state Clean Air Act.
23 The department issued an order (No. DE 78-534) approving the PRR
24 plant's plans including the carrying of salts in an enclosed screw
25 conveyor outside the plant building to a sealed container mounted on a

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 82-134

1 truck box. The company's application also indicated there would be
2 some stockpiling. No special license for temporary or permanent
3 storage was issued.

4 The DOE order provided that the construction and operation of the
5 plant (a) would not result in ambient air quality standards being
6 exceeded, (b) would provide all known available and reasonable methods
7 of emission control, and (c) would not result in significant
8 deterioration of the existing ambient air quality for sulfur dioxide
9 and suspended particulate matter.

10 III

11 During 1979 there were irregular contacts between the Department
12 and PRR regarding water and air quality issues associated with the
13 plant's performance. In November there was a citizen's complaint of a
14 malodorous ammonia smell coming from the plant site.

15 Also during this period appellant was contemplating building a
16 sludge bar waste recovery facility--a magnesium oxide pilot plant--and
17 securing a market for that product quickly. In the meantime on-site
18 temporary storage of the stockpile developed.

19 IV

20 In February, 1981, PRR joined with Process Technology, Inc., (PTI)
21 to sponsor an epsom salts plant to be operated in Spokane, in an
22 effort to find a new use for their sludge bar residues. Since
23 appellant then felt it would take 10 to 15 years to actually clear all
24 the storage off the site, a nearby old quarry was proposed as a
25

1 temporary disposal site. Much work and many governmental approvals
2 would necessarily precede any use of the old quarry site, known as
3 Allen-Moss Quarry, for PRR's sludge bar residue storage. However by
4 autumn 1981, the PRR-PTI salts plant development idea was a thing of
5 the past.

6 V

7 Departmental order No. DE 81-314, issued and amended in October
8 and November of 1981, respectively, provided in part: (a) for PRR to
9 explain plans for any pilot plants to DOE in advance and that new
10 markets(s) be identified for the spent flux, (b) for hooking up all
11 production equipment to a baghouse, except the large crusher, (c) that
12 PRR provide a schedule for installation of a baghouse and waste flux
13 discharge control facility and, (d) that in six months no new spent
14 flux could be stored on site. This order was not appealed.

15 In the spring of 1982, PRR requested an extension for final
16 compliance with the order until September 9, 1982. During this time
17 further delays and unfulfilled hopes for firm markets were experienced
18 by PRR. Appellant was kept DOE generally advised of its circumstances.

19 VI

20 In March of 1982, new Washington State dangerous and hazardous
21 waste regulations (Chapter 173-303 WAC) became effective. On July
22 26th appellant petitioned respondent DOE for exception of its sludge
23 bar residue from a dangerous waste classification. The company
24 requested the spent flux instead be classified as solid waste.
25 Temporary or permanent storage opportunities are more available for

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 82-134

1 solid wastes than for dangerous waters. Solid wastes can be regulated
2 under state and local health codes.

3 VII

4 Approximately six months after appellant's request for an
5 extension, the Department on September 14, 1982, issued DE 82-498
6 ordering that PRR cease storing new flux material on the plant site
7 immediately upon receipt of the order. PRR appealed this order to the
8 Pollution Control Hearings Board. Pre-hearing conferences and hearing
9 dates were set for the spring of 1983.

10 VIII

11 Documentary evidence reveals just over 30,000 tons of flux
12 material was stockpiled on site as of July, 1982. Citizen complaints
13 of odor and dust coming from the site interferring with human and
14 animal health and with full enjoyment of residential and farm property
15 again came to respondent agency's attention. Testimony offered at
16 hearing by rural neighbors of PRR attested to these interferences.

17 IX

18 Contacts were made by PRR with soils scientists in Oregon,
19 Washington and Idaho to ascertain the possibilities of testing the
20 spent flux for its probable value as a soil amendment--a fertilizer
21 and liming material--after it has been hydrated. Research, testing,
22 and advance marketing work on this final use alternative are still in
23 progress. DOE was aware of appellant's efforts and ongoing efforts by
24 other governmental units to evaluate the Moss Quarry as a temporary or
25 permanent spent flux storage site for PRR. Additional sludge bar

1 residue was added to the stockpile as PRR maintained plant operations,
2 thus becoming de facto a continuing temporary storage site for the
3 waste material.

4 X

5 An amendment to Order No. DE 82-498 ordering the cessation of
6 storage of new flux material at the plant site by June 8, 1983, was
7 issued by DOE on February 4, 1983. The Department and appellant
8 company agreed the earlier appeal to the Board would include this
9 amendment. Subsequently a new hearing date in June was scheduled.
10 Analysis and activity in both business and government sectors
11 continued in the intervening months. So did the citizen complaints.
12 The formal hearing occurred on June 6th in Spokane and June 8th in
13 Lacey.

14 XI

15 Any Conclusion of Law which should be deemed a Finding of Fact is
16 hereby adopted as such.

17 From these Findings the Board comes to these

18 CONCLUSIONS OF LAW

19 I

20 The Board has jurisdiction over these persons and these matters.
21 RCW 43.21B.110.

22 II

23 Each of the several Department orders (DE 78-534 through 82-498)
24 addresses preventive air pollution practices or actual particulate
25 matter discharge and ammonia emanating from the stockpile at the

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 82-134

1 phoenix Resource Recovery plant. However, the subject appeal covers
2 orders issued under Docket No. DE 82-498 (September 14, 1982 and
3 February 4, 1983) only and cannot be generalized as an appeal of a
4 series of orders. RCW 43.21B.120 and RCW 70.94.333.

5 III

6 DOE is the implementing agency for the state Clean Air Act and may
7 serve notice and orders on alleged violators and impose enforcement
8 action under circumstances where prevention or control of air
9 pollution fails to occur. RCW 70.94.332.

10 IV

11 Compliance with Washington natural resources and environmental
12 laws and regulations is incumbent upon all businesses and individuals
13 in this state. Failure to respond to a regular enforcement order
14 cannot simply be excused by the subject's own assessment of particular
15 business risk, poor market conditions, or a complicated regulatory
16 environment.

17 V

18 RCW 70.94.030(2) defines air pollution as:

19 ...presence in the outdoor atmosphere of one or more
20 air contaminants in sufficient quantity and of such
21 characteristics and duration as is, or is likely to
22 be, injurious to human health, plant, or animal life,
or property, or which unreasonably interfere with
enjoyment of life and property.

23 The implementing regulations at WAC 173-400-040 give specificity
24 to signs and signals of air pollution, in pertinent part at:

25 (2) Preventing particulate matter from being
deposited. No person shall cause or permit the
emission of particulate matter from any source to be

1 deposited beyond the property under direct control of
2 the owner or operator of the source in sufficient
3 quantity to interfere unreasonably with the use and
4 enjoyment of the property upon which the material is
5 deposited.

6 (3) Fugitive emissions. The owner or operator
7 of any emissions unit involving materials handling,
8 construction, demolition or any other operation which
9 is a source of fugitive emission:

10 (a) If located in an attainment area and not
11 impacting any nonattainment area, shall take
12 reasonable precautions to prevent the release of air
13 contaminants from the operation.

14 (4) Odors. Any person who shall cause or allow
15 the generation of any odor from any source which may
16 unreasonably interfere with any other property
17 owner's use and enjoyment of his property must use
18 recognized good practice and his procedures to reduce
19 these odors to a reasonable minimum.

20 (5) Emission of air contaminants detrimental to
21 persons or property. No person shall cause or permit
22 the emission of any air contaminant from any source,
23 including any air contaminant whose emission is not
24 otherwise prohibited by this chapter, if the air
25 contaminant causes detriment to the health, safety,
26 or welfare of any person, or causes damage to
27 property or business.

15 Metallic residue dust from appellant's plant site blowing onto
16 citizens' premises, covering equipment and other effects, and making
17 it uncomfortable or impossible to be outdoors or enjoy the full value
18 of their possessions constitutes an unreasonable interference with the
19 use and enjoyment of property, including business property.

20 Experiences of malodorous ammonia and sulfurous smell following a
21 rainfall also constitutes both unreasonable interference with property
22 use and a public health nuisance.

23 Physical reactions of coughing, choking, throat and eye
24 irritation, runny noses, sleeplessness, headaches and mild nausea in
25 the presence of dust and odors from the subject industrial source are

1 a detriment to the health and welfare of persons and can be, over even
2 a brief period of time, clearly injurious to human health. Signs of
3 irritations and health irregularities in the animals resident on
4 nearby properties, and dust covering of deck and garden plants and
5 fruits constitute unreasonable interference with, and damage to,
6 property.

7 Fireballs and dust clouds arising from the subject stockpile when
8 new spent flux is added are hazards. Their occurrence indicates a
9 failure to take reasonable precautions to prevent the release of air
10 contaminants from the subject operation.

11 Appellant has not timely challenged the decision that air
12 pollution was occurring. The gravamen of its present appeal is that
13 more time is needed to comply with the DOE orders.

14 v

15 From the time real exchanges of views on air pollution matters
16 between appellant and respondent began in 1979, through informal and
17 then formal regulation up to mid-1983, numerous opportunities for the
18 cessation of placement of new material on the subject stockpile (in
19 favor of its containment or use in some other fashion) presented
20 themselves. It became apparent there was no adequate plan for its
21 disposal or use, thus undermining the effectiveness of the 1978 DOE
22 approval to construct the plant.

23 Feasibility of the residue's industrial recycling or reuse in
24 agricultural land applications was studied without benefit of active
25 controlled experimentation with "new" sludge bar residue until

recently and without PRR slowing its 1000 ton-per-month deposit rate to the pile.

Efforts to locate and secure a temporary or permanent disposal site for such residue are commonly known to be time-consuming and were belatedly undertaken. More than adequate time has been permitted for compliance with the requirement to cease storage of new residue material by a date certain. The September 14, 1982 and February 4, 1983 amendments to Docket No. 82-498 were lawful and not unreasonable. Appellant has demonstrated no lawful authority to continue to pollute the air. This proceeding is not the review of a denial of a variance (RCW 70.94.181)¹, but a review of an enforcement order. The order should be affirmed.

VI

The Order DE 82-498 as amended should be effective soon after the issuance of the Board's order.

VII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

1. Requests for relief from pertinent provisions of Chapter 173-400 WAC are more appropriate in an application for a variance (RCW 70.94.181) than in an appeal from an enforcement order where air pollution is occurring or has occurred. The statute, RCW 70.94.181, ensures that the department has properly considered several identified factors and public input, and provides procedural safeguards in the event of a continuing dispute.

1 ORDER

2 Washington State Department of Ecology docket No. DE 82-498
3 (September 14 1982 and February 4, 1983) is affirmed effective on
4 August 23, 1983.

5 DATED this 17th day of August, 1983.

6 POLLUTION CONTROL HEARINGS BOARD

7
8 *Gayle Rothrock*
9 GAYLE ROTHROCK, Chairman

10 *David Akana*
11 DAVID AKANA, Lawyer Member

12
13 SEE DISSENT
14 LAWRENCE J. FAULK, Member

15
16
17
18
19
20
21
22
23
24
25
26
27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB No. 82-134

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
PHOENIX RESOURCE RECOVERY, INC.

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB NO. 82-134

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER
(DISSENTING OPINION)

This matter, the appeal of Department of Ecology Order DE 82-498 issued pursuant to the Clean Air Act requiring cessation of plant site storage of waste flux material by a date certain, came on for formal hearing before the Pollution Control Hearings Board on June 6, 1983, in Spokane, Washington. Seated for and as the Board were Lawrence Faulk and Gayle Rothrock (presiding). A second day of hearing ensued June 8, 1983, in Lacey where Board member David Akana joined Ms. Rothrock and Mr. Faulk. The first day proceedings were reported by Suzanne Gurich and Michael O'Brien; the second day was reported by Nancy J. Swenson.

1 Appellants appeared through their legal counsel Richard L.
2 Phillips and Christopher Marsh. Respondent was represented by
3 Assistant Attorney General Charles W. Lean.

4 Witnesses were sworn and testified. Exhibits were admitted
5 and examined. Post hearing memoranda were filed by each party.
6 From this the Board makes these

7 FINDINGS OF FACT

8 I

9 Phoenix Resource Recovery, Inc. (hereinafter "PRR" or
10 "Phoenix") is engaged in the business of recovering various
11 minerals and materials from by-products of various industrial
12 operations, primarily the by-product created by the Northwest
13 Alloys plant in Addy, Washington. The Northwest Alloys plant
14 recovers magnesium from ore. In the Northwest Alloys process, a
15 fluxing material is used to help purify the magnesium. This
16 fluxing material is then cast into ingots, which are commonly
17 referred to as sludge bars. Phoenix purchases these bars and
18 processes them at the Phoenix plant in Chewelah, Washington.
19 Phoenix has been operating at the Chewelah plant since 1978.

20 At Phoenix, residual magnesium is removed, and the remaining
21 material, consisting primarily of the residue of the fluxing
22 material or "spent flux," also referred to as sludge bar, is
23 deposited on a stockpile directly adjacent to the Phoenix plant.
24 The stockpile presently holds approximately 40,000 tons of spent
25

1 flux. PRR generates this residue at the rate of approximately
2 1000 tons per month at full production.

3 II

4 In 1978 Phoenix initially applied to the Department of
5 Ecology (hereinafter "DOE") for approval of construction,
6 installation, and operation of the Phoenix plant at Chewelah. On
7 December 15, 1978, DOE issued an order, docket No. DE78-534,
8 approving the construction, installation, and operation of the
9 Phoenix plant. This order provided generally that the
10 construction and operation of the plant would not result in
11 ambient air quality standards being exceeded, would provide all
12 known, available, and reasonable methods of emission control, and
13 would not result in significant deterioration of the existing
14 ambient air quality for sulfur dioxide and suspended particulate
15 matter. On October 15, 1981, DOE issued order, docket No.
16 DE81-614, which order was amended by order, docket No. DE 614,
17 First Amendment, dated November 23, 1981. That amended order
18 provided, in pertinent part, that Phoenix provide a schedule for
19 installation of a baghouse and waste flux discharge control
20 facility; and that, within six months, Phoenix should secure a
21 market for the spent flux in the stockpile and for the spent flux
22 currently being produced. The order provided that Phoenix could
23 store no additional spent flux after the expiration of said
24 six-month period, (May 23, 1982).

1 III

2 In November of 1979, citizens began complaining of smelling
3 ammonia. These complaints continued up to approximately
4 September 1982, when they ceased.

5 IV

6 On May 4, 1982 prior to the expiration of the six-month
7 period, Phoenix requested from DOE an extension for final
8 compliance to September 9, 1982. This extension was granted by
9 DOE. In the interim, various other delays were experienced and
10 no feasible alternatives could be finalized prior to September 9,
11 1982. DOE was aware of the delays Phoenix was experiencing.

12 V

13 On September 14, 1982, DOE issued order, docket No.
14 DE82-498, requiring that Phoenix "cease storing new flux material
15 on the plant site as required by Condition 3 or order, docket No.
16 DE81-614."

17 On February 4, 1983, DOE issued an amended order, docket No.
18 DE82-498, extending the final date of the "cease-and-desist"
19 order to June 8, 1983. From these orders appellant appealed to
20 this Board on October 5, 1982. By agreement of both parties, the
21 amendment dated February 4, 1983 is incorporated in this appeal.

22 VI

23 On January 12, 1982 PRR began to study the Moss Quarry Site
24 as a permanent disposal site for the sludge bar residue.

1 On July 7, 1982, an environmental checklist was prepared and
2 submitted to the Stevens County Public Health District,
3 Department of Natural Resources, and Department of Ecology. See
4 Exhibit A8. On July 12, 1982, Phoenix applied to the Department
5 of Ecology for a disposal site permit. See Exhibit A9.

6 On March 11, 1983, PRR was notified that a Notice of
7 Declaration of Significance had been issued and therefore an
8 Environmental Impact Statement (EIS) would be required. On March
9 21, 1983, an Environment Assessment was submitted to DOE. On
10 July 29, 1983, the Draft EIS was issued by DOE and DNR and
11 comments are due to DOE by September 2, 1983.

12 VII

3 On March 9, 1982, new Washington State Waste Regulations
14 became effective. On July 26, 1982, PRR petitioned respondent
15 DOE for exemption from dangerous waste regulations. (See Exhibit
16 A7.) Specifically the company requested that the sludge bars be
17 classified as solid waste. DOE has yet to make a decision on
18 this question.

19 VIII

20 The question to be decided by this Board is whether the PRR
21 stockpile of sludge bar residue is causing air pollution. A
22 secondary question arises if the Board concludes that it is
23 causing air pollution. The secondary question is whether DOE's
24 "cease and desist" order should be affirmed as is or in a
25 modified format.

IX

The Burden of Proof, in this case is on respondent DOE.

X

Four citizens presented evidence, including photos, asserting that dust from the stockpile is a source of air pollution. There was also evidence from witnesses that crop dusting in the vicinity could generate dust or dust like deposits.

Photographs were submitted in evidence. The photos generally indicate that dust exists at Phoenix. The evidence in the photos suggest that dust clouds migrate from Phoenix's stockpile to the adjoining properties. Exhibits R8 through 14 were photos taken prior to the installation of the baghouse at the Phoenix plant. These photos when compared to Exhibit R 15, a photo taken after the installation of the baghouse, indicates that most of the dust or particulate emission has been effectively controlled by the baghouse, and that the dust which presently is generated is associated with the active placing of new material on the stockpile. Appellant contends the installation of the baghouse has reduced the particulate emission from the plant in excess of 95 percent. See testimony of Dr. Roman. Even though Phoenix's plant manager, Mr. Hertig, testified that loading occurred on a daily basis, the area residents who testified acknowledged that dust was not present every day, was not a constant problem, and was noticeably a

1 problem only at occasional times during the year. Dr. Roman, Ms.
2 McLucas, Mr. Hertig, Mr. Doolittle, and Mr. Potter all testified
3 that the stockpile has a crust of hard material and does not lend
4 itself to dissipation by wind.

5 Mr. Hertig also testified that measures were taken at
6 Phoenix to reduce the chance of dust emissions during loading.
7 Further, DOE's witness, Mr. Ray testified that DOE had not
8 received any complaints since September 1982.

9 XI

10 Due to the interaction of spent flux with water, known as
11 hydration, an ammonia odor is released. Dr. Roman testified as
12 to the nature of the hydration process and indicated that the
3 hydration process is complete in a time frame of from one hour to
14 one week. Rainfall accelerates the hydration process. When
15 hydration is complete, no ammonia odor is released thereafter.
16 The ammonia odor comes from fresh unhydrated spent flux deposited
17 on the stockpile. Otherwise the stockpile emits no ammonia odor
18 at all.

19 Witnesses for both Phoenix and DOE admitted that an ammonia
20 odor is noticeable only intermittently, such as after a rainfall.
21 Mr. Ray (DOE) testified that there were no complaints on the DOE
22 logs relating to ammonia odor since September 1982. Several
23 residents contended they had medical problems which they
24 attributed to the Phoenix stockpile. Ms. Blomstrom stated that
25 she could correlate the symptoms to when Phoenix was dumping

1 material on the stockpile. The testimony was clear, however,
2 that Phoenix places material on the stockpile and operates the
3 plant on a daily basis. All of the witnesses testifying of
4 medical problems admitted that those problems were not
5 continuing, were intermittent, and did not amount to a permanent
6 condition.

7 Ms. Weusthoff testified as to medical problems with animals
8 on her property, particularly horses and mules. Her testimony
9 generally related the symptoms of the animals, but did not
10 directly correlate the symptoms she noticed to emissions from the
11 Phoenix stockpile.

12 There was no medical or other expert testimony presented
13 which indicated that either the dust or the ammonia caused any of
14 the problems to which these witnesses testified. Exhibits R16A
15 and R16B, the reports of the veterinarian concerning Ms.
16 Weusthoff's stated in part: "In general, both animals appeared
17 to have a respiratory irritant problem, but the squamous cell
18 carcinoma certainly confuses the issue;" "the lung did not have a
19 dust-related pneumonia (pneumoconiosis)," and "we did not see
20 dust-associated fibrosis in the lungs, and there was no evidence
21 of a dust problem in addition to the tumor."

22 Testimony showed that ammonia levels at the plant were found
23 to be approximately ten times less than the standards for
24 workplace levels of ammonia. See Exhibit 11, pp. 62-63. Two
25 separate tests, one on-site test performed by Washington

1 Industrial Safety Health Administration (WISHA) and one model
2 test performed by the United States Environmental Protection
3 Agency (EPA) were cited. The EPA test is discussed and its
4 results are located at pp. 62-633 and B-2-9 through 12 of Exhibit
5 All. The WISHA results are set forth at p. 62 of Exhibit All.

6 XII

7 It was never intended the plant site to be a permanent
8 storage area for spent flux. As Dr. Roman testified, the Phoenix
9 plant incorporated a new process of recovering magnesium from
10 sludge bars. It was uncertain from the beginning as to how the
11 process would operate and whether it would be economically
12 feasible. The spent flux was stored on site during operations
3 with the full intention of developing alternative means of
14 disposal, including marketing the spent flux as a soil amendment,
15 establishing a tertiary recovery facility for recycling the spent
16 flux, and investigating potential disposal areas.

17 XIII

18 Investigation into the marketability of spent flux as a soil
19 amendment has been underway since 1978. See Exhibit All, pp. 17,
20 21, 127-28, Appendix C. Dr. Roman testified to the involvement of
21 Phoenix with the Hawaiian Sugar-Growers Association, the Western
22 Washington Experimental Station at Puyallup through Darrell O.
23 Turner.

24 Most recently, soil amendment studies are being conducted by
25 Dr. Thomas Jackson and Dr. Robert Mahler. Both Dr. Jackson and

1 Dr. Mahler testified that spent flux shows good promise as a soil
2 amendment and/or liming agent of excellent value to both Eastern
3 and Western portions of the State of Washington, Northern Idaho,
4 and Western Oregon. Both Dr. Jackson and Dr. Mahler testified
5 that there was no evidence of toxicity to date and that neither
6 suspect that there will be any toxicity. The tests that both
7 professors are currently conducting are in the nature of field
8 tests, and extensive reports of field results and other aspects
9 of their testing will be complete by approximately the end of
10 1983. Previously involved with testing spent flux as a soil
11 amendment was Darrell Turner, whose findings and reports are
12 contained in Exhibit A11. Exhibit A5 represents the current
13 status of Dr. Jackson's studies, which studies should be complete
14 during the 4th quarter of 1983.

15 XIV

16 Another avenue of marketing involves the tertiary recovery
17 process. Dr. Roman testified that the possibility for recovering
18 other materials from spent flux and marketing those materials has
19 been underway since approximately 1979. Phoenix had an agreement
20 with Process Technology, Inc. (PTI) and was on the way to
21 developing a tertiary recovery pilot program in 1980. However,
22 PTI did not complete the project.

23 Dr. Roman testified that the stockpile represents from 1-1/2
24 to 2 million dollars potential revenue as a soil amendment and
25 from 5 to 7 million dollars potential revenue arising from

1 tertiary recovery programs. The testimony was clear that Phoenix
2 has continually attempted to market the spent flux, and that it
3 will not cease vigorously pursuing these attempts in the future.
4 See, e.g., Exhibit 11, pp. 126-128. The major reason for
5 Phoenix's desire to develop an effective market, aside from the
6 revenue potential, is the fact that there is only room on the
7 Phoenix Chewelah site to store spent flux for another two years.
8 Dr. Roman further testified that over the past two and one-half
9 years, not including expenditures for pollution equipment,
10 Phoenix has spent in the neighborhood of \$200,000.00 on efforts
11 to develop markets and/or alternatives for storing the spent
12 flux.

3 XV

14 In addition to pursuing marketing efforts, Phoenix has
15 sought other alternatives. The most promising alternative is the
16 potential disposal site in Moss Quarry. Appellants testified at
17 length on the availability at the Moss Quarry disposal site.
18 Exhibit 11 contains much information concerning the suitability
19 of Moss Quarry as a disposal site. In appellant's opinion, Moss
20 Quarry is an excellent site and the best one in Stevens County.

21 However, Moss Quarry site approval has developed a rather
22 uncertain timetable, which is inconsistent with the time limits
23 set in the DOE orders.

24 What had begun as an attempt to locate a suitable storage
25 site has expanded into a very lengthy and involved regulatory

1 process of approvals involving separate administrative and
2 governmental agencies with separate areas of expertise and
3 jurisdiction, from which independent approvals of permits are
4 required. At present, as confirmed by the testimony of Mr.
5 Potter, the various agencies and authorities are not proceeding
6 concurrently, thereby further complicating and delaying the
7 approval process.

8 The entire regulatory timetable concerning approval of the
9 Moss Quarry site has extended essentially indefinitely. The
10 testimony of all parties, including DOE witnesses, was clear that
11 it could not be accurately estimated as to when the Moss Quarry
12 disposal site would either be approved or rejected.

13 XVI

14 Appellants contend that if Phoenix is not allowed to
15 continue storing spent flux at the Chewelah site for an interim
16 period, it will be forced to cease operations within three weeks
17 from the time they are prohibited from storing the material on
18 site. No present available alternatives exist for continued
19 operation of the Phoenix plant without storing the spent flux on
20 site.

21 Dr. Roman testified that the spent flux processing at
22 Phoenix accounted for 83 percent of Phoenix's sales for the year
23 ending April 30, 1983. It would be an extreme hardship on
24 Phoenix to shut down.

1 Dr. Roman indicated that Phoenix paid approximately
2 \$350,000.00 in salary and wages to employees at the Chewelah
3 plant and Phoenix's expenditures in the Chewelah area amounted to
4 approximately \$500,000.00 for the year ending April 30, 1983.

5 XVII

6 The effect of a shut down on the general economic climate of
7 the Chewelah area is also apparent. Moreover, if Phoenix is
8 forced to cease operations immediately, Northwest Alloys will not
9 be far behind. As Louis Black testified, the only alternative to
10 shutting down Northwest Alloys in the event Phoenix is unable to
11 purchase and process the sludge bars would be to ship the sludge
12 bars to Arlington, Oregon, as they only have enough space to
13 store 90 days of material. That alternative is not economically
14 feasible because it would cost Northwest Alloys at least \$100.00
15 per ton in transportation costs and dumping fees to do so. Over
16 the course of a year, the cost to Northwest Alloys of this method
17 of disposal would approach \$2 million. The impact of Phoenix's
18 closure on Northwest Alloys would be even more immediately felt
19 since Northwest Alloys would also lose approximately \$400,000.00
20 per year in revenue from Phoenix from the sale of sludge bars.
21 Mr. Black testified that closure of Northwest Alloys in the face
22 of such increased costs would be difficult to avoid. Northwest
23 Alloy's plant employs approximately 460 employees who would be
24 laid off in the event of closure. The impact of Northwest
25

1 Alloys' closure would extend nationwide through the effect on
2 Northwest Alloys' parent company, Alcoa.

3 XVIII

4 Any Conclusion of Law which should be deemed a Finding of
5 Fact is hereby adopted as such.

6 From these Findings the Board comes to these

7 CONCLUSIONS OF LAW

8 I

9 The Board has jurisdiction over these persons and these
10 matters. RCW 43.21B.110.

11 II

12 Appellant's contention that the Board has jurisdiction to
13 hear arguments on DOE orders that have not been appealed to this
14 Board is without merit.

15 III

16 Applicable sections of the Revised Code of Washington (RCW)
17 and Washington Administrative Code (WAC) are as follows:

18 RCW 70.94.030(2) defines air pollution as:

19 ...presence in the outdoor atmosphere of one or more
20 air contaminants in sufficient quantity and of such
21 characteristics and duration as is, or is likely to be,
22 injurious to human health, plant, or animal life, or
23 property, or which unreasonably interfere with
24 enjoyment of life and property.

25 The implementing regulations at WAC 173-400-040 give
26 specificity to signs and signals of air pollution, in pertinent
27 part at:

28 (2) Preventing particulate matter from being
29 deposited. No person shall cause or permit the
30 emission of particulate matter from any source to be

1 deposited beyond the property under direct control of
2 the owner or operator of the source in sufficient
3 quantity to interfere unreasonably with the use and
4 enjoyment of the property upon which the material is
5 deposited.

6 (3) Fugitive emissions. The owner or operator of
7 any emissions unit involving materials handling,
8 construction, demolition or any other operation which
9 is a source of fugitive emission:

10 (a) If located in an attainment area and not
11 impacting any nonattainment area, shall take
12 reasonable precautions to prevent the release of
13 air contaminants from the operation.

14 (4) Odors. Any person who shall cause or allow
15 the generation of any odor from any source which may
16 unreasonably interfere with any other property owner's
17 use and enjoyment of his property must use recognized
18 good practice and his procedures to reduce these odors
19 to a reasonable minimum.

20 (5) Emission of air contaminants detrimental to
21 persons or property. No person shall cause or permit
22 the emission of any air contaminant from any source,
23 including any air contaminant whose emission is not
24 otherwise prohibited by this chapter, if the air
25 contaminant causes detriment to the health, safety, or
26 welfare of any person, or causes damage to property or
27 business.

14 IV

15 Although the evidence is conflicting on balance, the Board
16 believes that it was shown by a preponderance of the evidence
17 that air pollution is being caused by PRR.

18 V

19 Resolution of the sludge bar residue disposal problem is of
20 great concern to a number of citizens, public agencies and
21 private businesses. It is in everyone's interest to see that the
22 problem is solved as quickly as reasonably possible.

1 VI

2 A temporary system for preventing dust from contaminating
3 the environment should be installed by PRR prior to the end of
4 the third quarter 1983.

5 VII

6 While that effort is proceeding, a critical path schedule
7 should be developed cooperatively between the appellant,
8 respondent and other affected agencies that results in the sludge
9 bar residue being permanently removed from the site. This
10 schedule should be approved by all parties prior to the end of
11 the fourth quarter 1983.

12 VIII

13 The result of this schedule should be that the pile of
14 sludge bar residue should start to be removed prior to the end of
15 the third quarter 1984, and be complete within approximately two
16 years.

17 IX

18 Any Finding of Fact which should be deemed a Conclusion of
19 Law is hereby adopted as such.

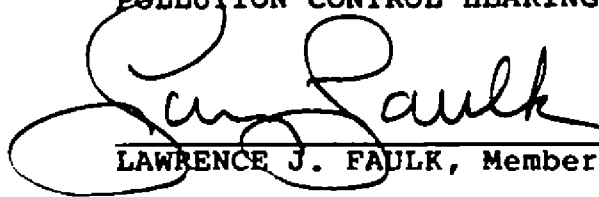
20 From these Conclusions the Board enters this
21
22
23
24
25

ORDER

Respondent's Order No. DE82-548 is upheld and remanded to the Department for a revised compliance schedule based on the above Conclusions of Law.

DATED this 17th day of August, 1983.

POLLUTION CONTROL HEARINGS BOARD



LAWRENCE J. FAULK, Member